

Title 18. State Board of Equalization

NOTICE IS HEREBY GIVEN

The State Board of Equalization proposes to amend Regulation 1571, *Florists*, in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales for the delivery of flowers, wreaths, etc. A public hearing on the proposed regulations will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on February 1, 2006. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by February 1, 2006.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Regulation 1571, *Florists*, was first adopted as Ruling 42 in 1933 to explain the application of tax to traditional sales of floral arrangements where one florist accepts the order and instructs another florist to make the delivery. The regulation was amended in 1971 to clarify the measure of tax, but the manner in which tax applies has remained the same since 1933. Currently, Regulation 1571 provides that tax applies to amounts charged by California florists for the delivery of flowers, wreaths, etc., regardless of whether another florist fills the order or the location where the flowers, wreaths, etc. are delivered. Tax does not apply to amounts received by California florists for making deliveries in California pursuant to instructions received from other florists. Without the provisions of Regulation 1571, florists would be subject to tax just like other retailers. Regulation 1620, *Interstate and Foreign Commerce*, would apply to sales for delivery outside of California; Regulation 1684, *Collection of Use Tax by Retailers*, would apply to out-of-state sales for delivery in California; and Regulation 1706, *Drop Shipments*, would apply to California florists who deliver flowers, wreaths, etc. in California pursuant to instructions from other florists.

The application of tax to orders taken by California florists for the delivery of flowers, wreaths, etc. outside California was discussed in two separate cases heard by the Board in March 2002 and February 2006, which were decided in favor of the taxpayers. Both cases involved taxpayers located in California that sold flowers exclusively through their Web sites and toll-free telephone numbers. In the first case, the taxpayer did not normally use a floral delivery association to fulfill and deliver orders. Instead, the taxpayer forwarded orders to: (1) growers who combined their own flowers with accessories provided by the taxpayer and shipped the arrangements by common carrier; or (2) packers who prepared the arrangements using flowers and accessories provided by the taxpayer and shipped the arrangements by common carrier. In the second case, the taxpayer used a floral delivery association; however, the taxpayer sent all its orders to other florists for fulfillment and delivery, and did not fulfill any orders itself.

In both cases, the taxpayers pointed out that the current rules for florists were developed for florists who operated traditional flower shops and conducted transactions for the delivery of flowers, wreaths, etc. through a florist delivery association. Because these taxpayers did not fit the traditional business model that Regulation 1571 was promulgated to address, these Internet-based retailers of flowers argued that they should not be considered "florists" for purposes of applying Regulation 1571. Rather, the taxpayers believed that their sales for out-of-state delivery should be reported under the standard rules for transactions in interstate and foreign commerce provided in Regulation 1620. The Board found in favor of both taxpayers and

subsequently determined that Regulation 1571 should be amended to reflect the results reached in those decisions.

Regulation 1571 is amended to define “florist” to mean a retailer who conducts transactions for the delivery of flowers, wreaths, etc. through a florist delivery association, unless that retailer does not fulfill other florists’ orders for the delivery of flowers, wreaths, etc. Florists who meet this definition would continue to report their sales as they do under the current provisions of Regulation 1571, while retailers of flowers, wreaths, etc. who do not meet the definition would report tax just like other retailers. It is intended that the current tax treatment of traditional florists not be affected by the amendment.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed amendments do not impose a mandate on local agencies or school districts. Further, the Board has determined that the amendments will result in no direct or indirect cost or savings to any State agency, any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5(a)(7), the State Board of Equalization made an initial determination that the adoption of the amendments to Regulation 1698 will have no significant statewide adverse economic impact directly affecting business.

The adoption of the proposed amendment to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The amendment to the regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed amendment to this regulation may affect small business.

COST IMPACT ON PRIVATE PERSON OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

FEDERAL REGULATIONS

Regulation 1571 and the proposed changes have no comparable federal regulations.

AUTHORITY

Section 7051, Revenue and Taxation Code.

REFERENCE

Section 6012 Revenue and Taxation Code.

CONTACT

Questions regarding the substance of the proposed rule should be directed to: Mr. Bradley Heller, Senior Tax Counsel, at P.O. Box 942879, 450 N Street, MIC:82, Sacramento, CA 94279-0082, email Bradley.Heller@boe.ca.gov . Telephone: (916) 324-2657; FAX: (916) 323-3387.

Written comments for the Board's consideration, requests to present testimony, bring witnesses to the public hearing and inquiries concerning the proposed administrative action should be directed to Ms. Diane Olson, Regulations Coordinator, at P.O. Box 942879, 450 N Street, MIC:80, Sacramento, CA 94279-0080, email Diane.Olson@boe.ca.gov . Telephone: (916) 322-9569, FAX (916) 324-3984.

ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's web site <http://www.boe.ca.gov>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's Web site following its public hearing of the proposed regulation. It will also be available for your inspection at 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may, in accordance with the law, adopt the proposed regulations if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of

such changes. The modified regulation will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.